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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MANUEL FLOREZ,

Defendant - Appellant.

No. 07-35112

D.C. Nos. CV-03-00201-JDS
CR-99-00048-JDS

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Jack D. Shanstrom, District Judge, Presiding

Submitted November 13, 2007^{**}

Before: TROTT, W. FLETCHER, and CALLAHAN, Circuit Judges

Manuel Florez, a federal prisoner, appeals pro se from the denial of his motion under 28 U.S.C. § 2255 to vacate, set aside, or correct the sentence imposed following his conviction for conspiracy to distribute methamphetamine.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Following Florez's direct appeal, another count was dismissed, and he was resentenced. The government correctly concedes that the district court erred in denying without an evidentiary hearing Florez's claim that he was deprived of his Sixth Amendment right to effective assistance of counsel when his attorney did not file an appeal after resentencing even though Florez allegedly instructed him to do so. *See United States v. Sandoval-Lopez*, 409 F.3d 1193, 1198 (9th Cir. 2005). We therefore vacate the district court's order and remand for further proceedings.

VACATED and REMANDED.